THE HON'BLE SRI JUSTICE C.V. RAMULU

Friday, 12th day of October,2007

W.P.No.9595 of 1998

Between:-

Coromandel Fertilizers Limited,
A Company incorporated under
Companies Act,1956 having its
Registered Office at Coromandal
House, Secunderabad, rep. by its
Secretary – Mr.S.Kumaraswamy … Petitioner

and

The Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Visakhapatnam
and others … Respondents

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W.P.No.9595 of 1998

ORDER:

This Writ Petition is filed seeking a Certiorari to call for the records relating to the Award dated 24-1-1998 passed by the 1st respondent-Industrial Tribunal-cum-Labour Court, Visakhapatnam in I.D.No.123 of 1993.

Petitioner is the Management of Coromandel Fertilizers Limited, a Company incorporated under the Companies Act,1956, S.P. Road, Secunderabad. Respondents 2 and 3 are workmen. Respondent No.4 is the Government of Andhra Pradesh, Labour, Employment, Training and Factories (Lab.I) Department, represented by its Additional Secretary. Respondent No.5 is the Commissioner of Labour, State of Andhra Pradesh, Hyderabad.

It appears, respondents 2 and 3 were working at the pump house of the petitioner-management under a contractor. According to respondents 2 and 3, the contract labour system has been abolished in the pump operations and other odd jobs of the petitioner-organization and they are entitled to be treated as workmen of the principal employer. When they were issued with a notice of termination of their services dated 30-1-1991 by the contractor under whom they were working, they have filed representations before the Deputy Commissioner of Labour on 21-10-1991 and 5-11-1991 and it was their complaint that the Deputy Commissioner has not initiated

conciliation proceedings and as a consequence of the delay on the part of the Deputy Commissioner, they are likely to be thrown out of service; as such, filed a Writ Petition being W.P.No.15434 of 1991 before this Court seeking a Mandamus to direct the State of Andhra Pradesh to refer the matter to Industrial Tribunal, Visakhapatnam for adjudication of the dispute between the workmen and the Management with regard to their absorption in the direct employment of the company. The said Writ Petition was disposed of on 29-11-1991 holding as under:

> "3. Under Section 12 of the Industrial Disputes Act,1947, the Conciliation Officer appointed under the Act has to initiate conciliation proceedings where any industrial dispute exists or is apprehended. He shall try to bring about settlement without delay. He is also obliged to investigate the dispute and all matters affecting the merits and the right settlement thereof. He is also obliged to do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute. In case all such efforts fail, he has to submit a report to the appropriate Government of the failure of conciliation proceedings. On receipt of the report, it is for the appropriate Government, in this case, State Government, to consider whether there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal and refer the matter to such Board, Court or Tribunal, as the case may be.
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> 4. The delay on the part of the 2nd respondent in initiating conciliation proceedings is not understandable. I, therefore, direct the 2nd respondent to initiate conciliation proceedings immediately and terminate the same in accordance with the obligation, which he has under the statute, either by inducing the parties to arrive at a settlement or by submitting a report of failure of conciliation. On receipt of such report, the State Government shall consider the same and pass appropriate orders as are called for under Section 12(5) of the Act. In the meantime, it is open to the petitioners to move the Labour Court for necessary orders under Section 2-A of the Act."

Subsequently, pursuant to the above directions, the Deputy Commissioner of Labour has initiated conciliation proceedings and on failure of the same, referred the matter to the Government and the Government after considering the report of the Deputy Commissioner

has issued G.O.Ms.No.649, Women's Development, Child Welfare & Labour (Lab.I) Department, dated 8-4-1993 referring the matter to the Labour Court for adjudication of the following issue:

> "Whether the demand of the two workmen (1) Abdul Latheef, (2) Y. Venkateswarlu to absorb them as regular employees of the company by the Management of Coromandel Fertilizers Limited, Visakhapatnam in view of G.O.Ms.No.375, dt.5.6.81 is justified ?"

Respondents 2 and 3 filed their claim statement and the petitioner-management filed its counter. In the counter, it was stated that firstly, the Government has no authority to refer such a dispute for adjudication of the Tribunal and it is not an industrial dispute as contemplated under Section 2(k) of the Industrial Disputes Act,1947 (for short 'the Act'). Assuming that there is a dispute, it is only an individual dispute and unless and until it is espoused by a Union or majority of the workmen, the same could not have been referred to by the Government and entertained by the Tribunal. Further, the contractor under whom respondents 2 and 3 worked was not made a party. The reference is not for adjudication of the conditions of service. Under the Contract Labour (Regulation and Abolition) Act, the contractor is the employer and there is no employer and employee relationship between the petitioner and respondents 2 and 3 herein. Further, the workmen are not entitled for any relief in view of G.O.Ms.No.375, Labour, Employment, Nutrition & Technical Education (Lab.II) Department, dated 5-6-1981 prohibiting certain operations on contract basis in the petitioner-company.

Before the Labour Court, on behalf of the workmen, W.Ws.1 to 3 were examined and Exs.W1 to W32 were marked. On behalf of the Management, M.Ws.1 to 5 were examined and documents-Exs.M1 to M240 and also Exs.X1 and X2 were marked. The Tribunal, on the

basis of the pleadings, formulated the following issues for its consideration:

1. Whether the Coromandel Fertilizers used the services of these two workmen ? If so since how long ?
2. Whether the two workers in question were the direct employees of Coromandel Fertilizers ?
3. Whether these workmen were surely employees of labour contractors ? If so, which contractor and since how long ?
4. To which category of labour contemplated by G.O.Ms.No.375 do these two workers belong ? In other words, what is the nature of the job that was being rendered by these two workmen ?
5. If they are found to have been employed by Coromandel Fertilizers ostensibly through contractors in the areas of labour that are shut off for engagement of contract labourers, to what relief these two workmen are entitled ?
6. Whether such a relief is within the 4 corners of this reference ?
7. Whether the reference is valid and whether this tribunal can go into that question at all ?
8. What should be the award ?

Ultimately, it was held that the reference was maintainable and valid. Further, in view of G.O.Ms.No.375, dated 5-6-1981, the work of respondents 2 and 3 can be safely classified as coming under category of 'casual labour-odd jobs'; therefore, directed the Management to absorb respondents 2 and 3 as regular employees of the company with all consequential benefits. Aggrieved by the same, the present Writ Petition is filed.

Learned counsel for the petitioner strenuously contended that the very pleadings in the claim statement filed by the workmen would indicate that there are only 2 workers involved i.e. respondents 2 and 3. They were attending to pump operations, which is at a distance of 6 kilometres from the main activity of the factory. They were doing some odd jobs. The Tribunal totally ignored the directions of this Court in Writ Petition No.15432 of 1991, dated 29-11-1991. The very industrial

dispute is not valid. The matter was not referred on the basis of any Union raising the dispute or there being any substantial number of individuals involved in the dispute. The dispute does not fall into the definition of 'industrial dispute' as contemplated under Section 2(k) of the Act. The findings of the Tribunal are perverse. Two persons cannot make an association between themselves. In this regard, learned counsel relied upon the judgments reported in **VAZIR SULTAN TOBACCO CO. v. STATE OF A.P.**[1], **TIRUPATHI COTTON MILLS LTD. V. LABOUR COURT**[2], **STATE OF PUNJAB v. GANDHARA TRANSPORT CO.**[3], **INDIAN CABLE CO.LTD. v. ITS WORKMEN**[4], **BOMBAY UNION OF JOURNALISTS v. THE HINDU**[5], **WESTERN INDIA MATCH COMPANY v. WORKERS' UNION**[6] and **RAJASTHAN S.R.T. CORPORATION v. KRISHNA KANT**[7]. According to the learned counsel for the petitioner, even assuming that there is abolition of contract and engaging people of odd jobs is covered under the said G.O.Ms.No.375, dated 5-6-1981, the same has no application to the facts of this case. The pump house set up by the Company is located at a distance of 6 Kms away from the main activity and it does not form part of the industry. Even according to the evidence of respondents 2 and 3 they are operating the plant from 10-10-1984 and pumping of water is done round the clock and they raised a dispute for regularizing their services before the Deputy Commissioner of Labour. The conciliation failed and Ex.W1 is the failure report. Government made a reference to the Tribunal after receiving the failure report from the Deputy Commissioner. There was no connection between the main activity of the factory and the pump house; as such, there is no relationship of master and servant and assuming, there is any such thing, the dispute could not have been

referred and entertained by the Tribunal, since it is an individual dispute as to regularization of the services. Unless and until it is espoused by any union, it could not have been entertained by the Government and referred to the Tribunal. Further, G.O.Ms.No.375, dated 5-6-1981 has no relevance to the facts of the case and it is not applicable in case of respondents 2 and 3. The G.O. was issued on 5-6-1981, whereas respondents 2 and 3 were appointed on contract basis after issuance of the said G.O. and worked with a contractor. Therefore, they have no right whatsoever to claim the benefits of G.O.Ms.No.375, dated 5-6-1981.

Whereas, Sri A.K. Jayaprakash Rao, learned counsel for respondents 2 and 3, contended that the Management has not challenged the reference, as soon as the matter was referred to the Tribunal, though it was permissible for it to do so. The contractor, who was examined as one of the witnesses, denied that he was there when the dispute arose between the parties as a contractor. Once the Government refers the dispute, the Tribunal has to answer the same and it cannot go beyond the reference, whether the reference was valid or not. In fact, as per the decision rendered by the Supreme Court in AIR 1984 SC 516, para-24, the dispute is referable, whether it is filed by an individual or espoused by the union. There is no necessity of a union raising a dispute in view of G.O.Ms.No.375, dated 5-6-1981 under which the rights of the parties are crystallized. Therefore, the Tribunal rightly came to the conclusion that there was a valid reference and respondents 2 and 3 are entitled for the relief of absorption into the services of the company.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned Award and other material made available on record.

From the above pleadings, two questions arise for consideration:

(1) Whether the reference by the Government in G.O.Ms.No.649, dated 8-4-1993 for adjudication of the dispute between the parties is valid ?

(2) Whether in G.O.Ms.No.375, dated 5-6-1981 engaging the contract labour is prohibited and the nature of work attended to by respondents 2 and 3 did fall into the said category ?

As noticed above, in view of the Order passed by this Court in Writ Petition No.15434 of 1991, dated 29-11-1991, the Conciliation Officer-cum-Deputy Commissioner of Labour has submitted a failure report and thereafter, the Government has referred the dispute, under G.O.Ms.No.649, dated 8-4-1993 for adjudication by the Labour Court.

In **VAZIR SULTAN TOBACCO CO.** case (1 supra), it was held that the support of 104 out of 2170 employees in the establishment to the cause of the individual dismissal was not sufficient to convert the individual dispute into industrial dispute. The number of the workmen in the establishment, who supported the individual cause could not be called appreciable or substantial. The other workmen in other establishment though engaged in the same line of business could not be said to have any direct or substantial interest in the cause of such dismissed employee. Hence, their support could not convert the individual dispute into industrial dispute.

In **TIRUPATHI COTTON MILLS LTD.** case (2 supra) it was held by this Court that that an individual dispute in order to be an industrial dispute, it must have the collective support from a considerable or substantial number of workmen in the establishment and that an industrial dispute is supported by other workmen will also have to be established either in the form of a resolution of a union of which the workmen may be members or the workmen themselves, who

support the dispute or in any other manner. It was also held that a mere fact that a general union at whose instance an industrial dispute concerning an individual dispute is referred for adjudication has on its rolls a few of the workmen of the establishment as its members, it could not be inferred that the individual dispute has been converted into an industrial dispute.

I n **STATE OF PUNJAB v. GANDHARA TRANSPORT CO.** (3 supra), the espousal of the dispute was only by five out of sixty employees of the company. Under those circumstances, it was held that the espousal of the cause of dismissed workmen by only one-twelfth of the employees was not an espousal by an appreciable or substantial body of workmen. Further, the State Government will have jurisdiction to make a reference only if there is an industrial dispute and as there was no industrial dispute, the reference was bad in aw.

In **INDIAN CABLE CO.LTD.** case (4 supra), it was observed that the dispute of a single workman would become an industrial dispute when it is sponsored by a union or by a considerable number of workmen, for it can then be taken that it does affect them as a class. No hard and fast rule can be laid down as the number of workmen whose association will convert an individual dispute into an industrial dispute and that must depend on the facts of each case and the nature of the dispute.

In **BOMBAY UNION OF JOURNALISTS** case (5 supra), it was held by the Supreme Court as under:

> "A dispute between an employer and a single employee cannot per se be an industrial dispute, but it may become one if it is taken up by the Union or a number of workmen. The persons who seek to support the cause of a workman must themselves be directly and substantially interested in the dispute and this would depend on the facts and circumstances of each case. Persons who are not

employees of the same employer cannot be regarded as so interested, that by their support they may convert an individual dispute into an industrial dispute. In each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute the test is whether at the date of the reference the dispute was taken up or supported by the Union of the workmen of the employer against whom the dispute is raised by an individual workman or by an appreciable number of workmen."

In **WESTERN INDIA MATCH COMPANY** case (6 supra), the Supreme Court held as under:

"……..The only condition for an individual dispute turning into an industrial dispute is the necessity of a community of interest and not whether the concerned workman was or was not a member of the union at the time of his dismissal. The test is whether the dispute referred for adjudication is one in which the workman or a substantial section of them have a direct and substantial interest even though it relates to a single workman. Such an interest on the part of the workmen or substantial part of them must exist on the date of reference and not necessarily on the date on which the cause occurs, as otherwise an individual dispute cannot become an industrial dispute…..What is essential for converting an individual dispute into an industrial dispute is that appreciable number of employees of the employer must take up the dispute and support it….."

In **RAJASTHAN S.R.T. CORPORATION** case (7 supra), the Supreme Court held as under:

"18. The expression "Industrial Dispute" is defined in Section 2(k) to mean any dispute or difference (i) between employers and employers; (ii) between employers and workmen; and (iii) between workmen and workmen, provided such dispute is connected with the employment, non-employment, terms of employment or conditions of labour of any person. It is well settled by several decisions of this court that a dispute between the employer and an individual workman does not constitute an industrial dispute unless the cause of the workman is espoused by a body of workmen [See Bombay Union of Journalist v. "The Hindu", (1961)2 Lab LJ 436 : (AIR 1963 SC 318)]. Of course, where the dispute concerns the body of the workers as a whole or to a section thereof, it is an industrial dispute. It is precisely for this reason that Section 2-A was inserted by Amendment Act 35 of 1965. It says, "where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual

workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute". By virtue of this provision, the scope of the concept of industrial dispute has been widened, which now embraces not only Section 2(k) but also Section 2-A. Section 2-A, however, covers only cases of discharge, dismissal, retrenchment or termination otherwise of services of an individual workman and not other matters, which means that - to give an example - if a workman is reduced in rank pursuant to a domestic enquiry, the dispute raised by him does not become an industrial dispute within the meaning of Section 2-A. (However, if the union or body of workmen espouses his cause, it does become an industrial dispute.) We have given only one instance; there may be many disputes which would not fall within Section 2(k) or Section 2-A. It is obvious that in all such cases, the remedy is only in a Civil Court or by way of arbitration according to law, if the parties so choose. The machinery provided by the Industrial Disputes Act for resolution of disputes (in short, Section 10 or 12) does not apply to such a dispute."

Learned counsel for the petitioner has strenuously contended that mere direction by this Court to the Government to consider whether there is a case for reference to the Board/Labour Court/Tribunal/National Tribunal and if there is a case, to refer the same to such forum, does not mean that the Government is not supposed to examine as to whether it is an industrial dispute at all as contemplated under Section 2(k) read with Sec.10(1)(c) and 12(5) of the Act. In this regard, it is relevant to refer Sections 2(k) and 10(1)(c) of the Act, which read as under:

"Section 2(k)- "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the condition of labour, of any person."

Section 10. **Reference of disputes to Boards, Courts or Tribunals:-** (1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing—

(a) & (b)……..
(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication;

12. **Duties of Conciliation Officers:-** (1) to (4)……
(5) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal, it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.

From the above, it is clear that though the case on hand cannot be said to be an industrial dispute, still it was referred to by the Government to the Labour Court. As per the above provisions, even an individual dispute, though fits into the teeth of the definition of Section 2(k) of the Act, unless and until it is raised by a Union or supported by a considerable number of workmen, it cannot be called an industrial dispute in its strict sense. In this case, admittedly, no union has raised the dispute before the Conciliation Officer. Therefore, it cannot be called an industrial dispute, which requires to be referred by the Government, as per law. However, learned counsel for respondents 2 and 3 stated that there are two individual workmen and they are working at a distance of 6 kilometres from the main factory and are not part and parcel of any Union and the Union has not taken up the dispute; therefore, they are a class by themselves. Further, they are an Association to claim themselves as such; therefore, they can maintain a dispute of this nature. Learned counsel for respondents 2 and 3, however, referred to the decisions in **ROSHAN DEEN v. PREETI LAL**[8] and **NATIONAL ENGINEERING INDUSTRIES LTD. v. STATE OF RAJASTHAN**[9].

I n **ROSHAN DEEN's** case (9 supra) it was held by the

Supreme Court as under:

> "12. We are greatly disturbed by the insensitivity reflected in the impugned judgment rendered by the learned single Judge in a case where judicial mind would be tempted to utilise all possible legal measures to impart justice to a man mutilated so outrageously by his cruel destiny. The High Court non-suited him in exercise of a supervisory and extraordinary jurisdiction envisaged under Article 227 of the Constitution. Time and again this Court has reminded that the power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and not to thwart it. (Vide State of Uttar Pradesh v. District Judge, Unnao and others, (AIR 1984 SC 1401)). The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The look out of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the byproduct of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law."

I n **NATIONAL ENGINEERING INDUSTRIES LTD.** case (9 supra), the Apex Court held as under:

> "28. Industrial Tribunal is the creation statute and it gets jurisdiction on the basis of reference. It cannot go into the question on validity of the reference. Question before the High Court was one of jurisdiction which it failed to consider. A tripartite settlement has been arrived at among the management, Labour Union and the Staff Union. When such a settlement is arrived at it is a package deal. In such a deal some demands may be left out. It is not that demands, which are left out, should be specifically mentioned in the settlement. It is not the contention of Workers' Union that tripartite settlement is in any way *mala fide*. It has been contended by the Workers' Union that the settlement was not arrived at during the conciliation proceedings under Section 12 of the Act and as such not binding on the members of the Workers' Union. This contention is without any basis as the recitals to the tripartite settlement clearly show that the settlement was arrived at during the conciliation proceedings."

From the above, it is clear that unless and until a dispute is raised by a Union insofar as individual disputes are concerned, it cannot be called an industrial dispute in its strict sense. May be, there are only two individuals, but it is not their case that they have

approached the Union at any point of time for raising such a dispute before the Conciliation Officer etc. Merely because there was a direction to the Government to consider for referring the matter, if the Conciliation Officer submits a failure report, itself does not mean, that becomes an industrial dispute and, therefore, Government could have referred the matter to the Labour Court. Even according to the Judgment in Writ Petition No.15434 of 1991, dated 29-11-1991, Government is supposed to consider the matter and pass appropriate orders as are called for under Section 12(5) of the Act. While examining the whole issue, the Labour Court ought to have kept in mind that this being an individual dispute and not raised by substantial number of people, it cannot be called strictly an industrial dispute under Section 2(k) read with Section 10(1)(c) of the Act. Therefore, I am of the view that the findings arrived at by the Labour Court that two individuals are an association between themselves; as such, the dispute raised by them is an industrial dispute and the Government had rightly referred the same to it and it can entertain the same and adjudicate upon are not correct.

There is no necessity of going into other issues in view of the above discussion. As such, the impugned Award is liable to be set aside and is accordingly set aside. However, respondents 2 and 3 are at liberty to work out their remedies as available under the law.

Accordingly, the Writ Petition is allowed. No order as to costs.

12-10-2007

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EXPRESS NEWSPAPERS v. LABOUR COURT[10] In **EXPRESS NEWSPAPERS** case (1 supra), a branch of the company was employing five workmen and two of such workmen were dismissed by the Management. The concerned workmen belonging to the category of working journalists. Their cause was taken up by the Union of Working Journalists. But, the concerned workmen were not members of the Union. The other two workmen, viz., the teleprinter operator and the attender, who were not members of the union of the working journalists, promising their cooperation to the union in any steps, which the union might take in obtaining the redressal of the grievances of the two dismissed workmen. There was no further evidence to show that they took any further interest in the matter. It was held that the individual dispute of the two dismissed workmen, in the circumstances, assumed the characteristics of 'industrial dispute' within the meaning

of Section 2(k) of the Act.

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[1] 1964(1) LLJ 622
[2] 1968(2) LLJ 723
[3] 1975(4) SCC 838
[4] 1962(1)LLJ 409
[5] AIR 1963 SC 318
[6] 1970(2) LLJ 256
[7] AIR 1995 SC 1715
[8] 2000(3) SCC
[9] 2000(1) LLJ 247
[10] 1962(2) LLJ 200